

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

JESSE VARGAS,)
)
Plaintiff)
)
v.) **2:14 CV 288**
)
LAKE COUNTY POLICE)
DEPARTMENT, *et al.*,)
)
Defendants.)

MEMORANDUM AND ORDER

Plaintiff has moved to voluntarily dismiss, with prejudice, counts VII-XII (including a duplicative eleventh count) of his complaint, DE # 36, and moved to voluntarily dismiss paragraphs 121 and 122 of Count VI, DE # 42. Both motions are unopposed.

“Rule 41(a)(1)(i) does not speak of dismissing one claim in a suit; it speaks of dismissing ‘an action’ – which is to say, the whole case.” *Berthold Types Ltd. v. Adobe Sys. Inc.*, 242 F.3d 772, 777 (7th Cir. 2001); *see also Loutfy v. R.R. Donnelley & Sons, Co.*, 148 F.R.D. 599, 602 (N.D. Ill. 1993) (collecting cases). Nevertheless, where parties have stipulated to dismissal of particular claims, this court and other district courts in this circuit, *see, e.g., Gatling v. Nickel*, 275 F.R.D. 495, 496 (E.D. Wis. 2011), have allowed the practice. Here, although neither motion is opposed, there is no stipulation. Cf. *Sarff v. Farmco, LLC*, No. 11-3153, 2011 WL 3489842 (C.D. Ill. Aug. 10, 2011) (*Gatling* not followed for unopposed motion because no stipulation). Moreover, the request to

dismiss individual *paragraphs* of the complaint takes that motion beyond the purview of Rule 41. Accordingly, the court will treat both motions as motions for leave to amend the complaint pursuant to Rule 15(a). *Cf. Loutfy*, 148 F.R.D. at 602.

Treated as such, both motions (DE # 36, DE # 42) are **GRANTED**. Plaintiff is **ORDERED** to file an amended complaint in compliance with this order; that is, omitting counts VII through XII including duplicate count XI, and omitting paragraphs 121 and 122 of Count VI.

SO ORDERED.

Date: April 21, 2016

s/ James T. Moody
JUDGE JAMES T. MOODY
UNITED STATES DISTRICT COURT